

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-303 (Sub-No. 27)

WISCONSIN CENTRAL LTD.–ABANDONMENT–
IN OZAUKEE, SHEBOYGAN AND MANITOWOC COUNTIES, WI

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: November 1, 2004

By decision and certificate of interim trail use or abandonment served on October 18, 2004, the Board granted authority to Wisconsin Central Ltd. (WCL), under 49 U.S.C. 10903, to abandon a 37-mile line of railroad, known as the Plymouth Line, extending from milepost 114.8 near Saukville to milepost 151.8 near Kiel in Ozaukee, Sheboygan and Manitowoc Counties, WI, subject to trail use, environmental and standard employee protective conditions. The decision and certificate was scheduled to become effective on November 17, 2004, unless an offer of financial assistance (OFA) was filed on or before October 28, 2004.

On October 27, 2004, the Wisconsin Department of Transportation (WisDOT) and the Wisconsin & Southern Railroad Co. (WSOR) (offerors) jointly filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27 for WisDOT to purchase the assets of, and for WSOR to operate, the entire 37-mile Plymouth Line.

An OFA to acquire a line for continued rail service need not be detailed, but an offeror must show that it is financially responsible and that the offer is reasonable. See Conrail Abandonments Under NERSA, 365 I.C.C. 472 (1981). WisDOT is a governmental entity that is presumed to be financially responsible. 49 CFR 1152.27(c)(1)(ii)(B). WSOR, which is a Class II railroad operating over 600 miles of trackage in central and southern Wisconsin and northern Illinois, has submitted financial information showing that it has the financial resources to operate the line.¹

¹ WOSR also has filed a motion for protective order under 49 CFR 1104.14 to prevent public disclosure of the Highly Confidential Version of its offer and supporting exhibits that it submitted as evidence of its financial responsibility. WSOR claims that the evidence contains commercially sensitive information that would be damaging if disclosed. WOSR has submitted a redacted version in its public filing. The motion will be granted. The Highly Confidential Version of its offer and supporting

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The offerors indicate that WisDOT is offering to purchase the line's assets for \$2,068,522, which is the estimated net liquidation value that was reported in WCL's application. They note, however, that WCL's valuation of the line may be excessive due to a number of real estate title concerns and the omission of track removal and tie disposal costs. The offerors state that WisDOT may lower its offer and request that the Board set terms and conditions, if the parties fail to negotiate a mutually acceptable acquisition agreement.

Offerors state that WisDOT proposes to acquire the line's assets consisting of the real estate, tracks and other materials on the line,² and that WSOR will acquire the common carrier authority over the Plymouth Line. Because the offerors are financially responsible and have offered assistance, the effective date of the decision and certificate authorizing abandonment will be postponed.

Any person filing a request to set terms and conditions must pay the requisite filing fee, set forth at 49 CFR 1002.2(f)(26), which currently is \$18,000. An original and 10 copies of the request should be submitted along with the fee, in an envelope bearing the docket number of this proceeding, along with the words "Attention: Request to Set Terms and Conditions" in the lower left hand corner.

Appeals to this decision are governed by 49 CFR 1011.2(a)(7). Any appeal must be filed within 10 days of the service date of this decision and will be heard by the entire Board.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The Highly Confidential Version of the offer and supporting exhibits will be kept under seal by the Board and will not be placed in the public docket or otherwise disclosed to the public, unless otherwise ordered by the Board.

2. The effective date of the decision and certificate authorizing the abandonment is postponed to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.

¹(...continued)

documents will be kept under seal and will not be placed in the public docket unless otherwise ordered by the Board.

² WisDOT indicates that it will be filing a Petition for Declaratory Relief pursuant to 5 U.S.C. 554(e) and 49 U.S.C. 721 seeking a ruling that it will not become a common carrier as a result of the transaction.

3. If offerors and WCL cannot agree on the purchase price, either party may request the Board to establish the terms and conditions of the purchase on or before November 26, 2004. If no agreement is reached and no request is submitted by that date, the Board will serve a decision vacating this decision and allowing the abandonment decision and certificate to become effective.

4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary